

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
)
Debtors.) Jointly Administered

**TRUSTEE’S MOTION TO COMPROMISE AND
SETTLE A CERTAIN REIMBURSEMENT CLAIM
AGAINST SOUTHERN NEW HAMPSHIRE UNIVERSITY**

Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), by counsel, pursuant to 11 U.S.C. §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, requests entry of an order authorizing the Trustee to compromise and settle a claim against Southern New Hampshire University (“SNHU”) related to certain reimbursable expenses pursuant to the *Teach-Out Program Articulation Agreement Between Southern New Hampshire University and Daniel Webster College* (the “Teach-Out Agreement”) on the following grounds:

I. JURISDICTION

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for relief are sections 105 and 363 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

II. BACKGROUND

4. On September 16, 2016 (the “Petition Date”), ITT Educational Services, Inc. (“ITT”), ESI Service Corp. (“ESI”) and Daniel Webster College, Inc. (“Webster College,” and together with ITT and ESI, the “Affiliated Debtors”) filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee under section 701 of the Bankruptcy Code in each of the Affiliated Debtors’ bankruptcy cases on the Petition Date, and in accordance with section 702(d) of the Bankruptcy Code, became the permanent case trustee on November 1, 2016 following the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors’ bankruptcy cases to be jointly administered for procedural purposes only.

6. Prior to and after the Petition Date, Agera Energy, LLC (“Agera”) provided certain utility services to Webster College.

7. On or about September 12, 2016, Webster College and SNHU entered into the Teach-Out Agreement, providing for, in part, SNHU’s acceptance of Webster College’s students, SNHU’s use of Webster College’s facilities, and requiring SNHU to pay and/or reimburse Webster College for all reasonable operating costs related to Webster College’s facilities during the term of the Teach-Out Agreement, including utility expenses.

8. On November 6, 2019, the Court entered its *Order Granting Agreed Application for Allowance of Administrative Expense in Favor of Agera Energy, LLC* [Doc 3686], granting Agera an allowed administrative expense in the amount of \$50,000.00, which has been paid by the Trustee, for postpetition utility services.

9. The vast majority of Agera's administrative expense was incurred during the term of the Teach-Out Agreement. Accordingly, pursuant to the terms of the Teach-Out Agreement, the Trustee has a claim against SNHU for reimbursement of its prorated share of Agera's administrative expense claim previously paid by the Trustee.

10. The Trustee and SNHU have determined that SNHU's prorated share of Agera's administrative expense claim is \$46,500.00 (the "Reimbursement Claim"). In full compromise and settlement of the Reimbursement Claim, SNHU has agreed to pay the Reimbursement Claim within thirty (30) days of the entry of an Order approving this motion.

III. RELIEF REQUESTED

11. The Trustee requests entry of an order, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 (a) authorizing the Trustee to compromise and settle the Reimbursement Claim, and (b) directing SNHU to pay the Reimbursement Claim in the amount of \$46,500.00 to the Trustee within thirty (30) days of entry of an order approving this motion.

IV. GROUNDS FOR GRANTING RELIEF

12. A court may authorize a trustee to enter into a settlement so long as it is a sound exercise of the trustee's business judgment. *See* 11 U.S.C. § 363(b); *In re UAL Corp.*, 443 F.3d 565, 571 (7th Cir. 2006) (use under section 363 of the Bankruptcy Code must "[make] good business sense"); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (section 363 involves exercise of fiduciary duties and requires an "articulated business justification"); *see also In re Olde Prairie Block Owners, LLC*, 448 B.R. 482, 492 (Bankr. N.D. Ill. 2011) (same). Moreover, when applying the "business judgment" standard to a use of estate property under section 363 of the Bankruptcy Code, a trustee's judgment is "entitled to great judicial deference as long as a

sound business reason is given.” See *In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012).

13. Similarly, Bankruptcy Rule 9019(a) sets forth the requirements for compromises and settlements and permits a bankruptcy court to approve a trustee’s “compromise or settlement” after notice and a hearing, if such settlement is “fair and equitable . . . and in the best interests of the bankruptcy estate.” *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994); see also *In re Energy Co-op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) (“The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.”); *In re Smith*, No. 02-16450-JKC-7A, 2008 WL 4276171, at *2 (Bankr. S.D. Ind. Sept. 10, 2008) (same). Settlements should be approved unless “the settlement ‘falls below the lowest point in the range of reasonableness.’” *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004) (quoting *Energy Co-op.*, 886 F.2d at 929); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); see also *In re Artra Grp., Inc.*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003). Settlements and compromises are favored in bankruptcy because they expedite case administration and reduce unnecessary administrative costs. *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000). In determining whether a compromise is in the best interests of the estate, the Court must compare “the settlement’s terms with the litigation’s probable costs and probable benefits.” *In re Am. Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987); see also *Doctors Hosp.*, 474 F.3d at 426 (“Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, including the possibility that disapproving the settlement will cause wasting of assets.”) (internal quotation marks and citations omitted); *Commercial Loan*, 316 B.R. at 697 (holding that relevant factors a bankruptcy court should consider in approving a settlement include “the litigation’s

probability of success, its complexity, and its ‘attendant expense, inconvenience and delay’” (quoting *Am. Reserve Corp.*, 841 F.2d at 161)).

14. Considering the terms of the Teach-Out Agreement, the Trustee has determined the Reimbursement Claim represents an equitable proration of the previously paid administrative expense to Agera. As such, the Trustee submits the amount of the Reimbursement Claim is fair, equitable, in the best interest of the Affiliated Debtors’ bankruptcy estates, and a sound exercise of her business judgment within the range of reasonableness for approval under Bankruptcy Rule 9019(a).

V. NOTICE

15. Pursuant to the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; and (d) SNHU.

NOTICE IS GIVEN, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern Time) on **January 8, 2020**. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail or in person at:

116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

The objecting party must also serve a copy of the written objection upon the Trustee’s counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204. **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

NOTICE IS FURTHER GIVEN that in the event an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on **January 15, 2020** at **1:30 p.m.**

(prevailing Eastern time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

WHEREFORE, the Trustee respectfully requests entry of an order, (i) authorizing the Trustee to compromise and settle the Reimbursement Claim, (ii) directing SNHU to pay the Reimbursement Claim in the amount of \$46,500.00 to the Trustee within thirty (30) days of entry of an order approving this motion; and (iii) granting the Trustee all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By: /s/ Cassandra Nielsen
Cassandra Nielsen

Deborah J. Caruso (Atty. No. 4273-49)
John C. Hoard (Atty. No. 8024-49)
James E. Rossow Jr. (Atty. No. 21063-29)
Meredith R. Theisen (Atty. No. 28804-49)
Cassandra Nielsen (Atty. No. 31440-49)
RUBIN & LEVIN, P.C.
135 N. Pennsylvania Street, Suite 1400
Indianapolis, Indiana 46204
Tel: (317) 634-0300
Fax: (317) 263-9411
Email: dcaruso@rubin-levin.net
johnh@rubin-levin.net
jim@rubin-levin.net
mtheisen@rubin-levin.net
cnielsen@rubin-levin.net
Attorneys for Deborah J. Caruso, Trustee

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2019, a copy of the foregoing *Trustee's Motion to Compromise and Settle a Certain Reimbursement Claim Against Southern New Hampshire University* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

John Joseph Allman jallman@hbkfirm.com, dadams@hbkfirm.com
Richard Allyn rallyn@robinskaplan.com
Robert N Amkraut ramkraut@foxrothschild.com
Scott S. Anders scott.anders@jordanramis.com, litparalegal@jordanramis.com
Manuel German Arreaza manuel.arreaza@cfpb.gov
Todd Allan Atkinson tatkinson@ulmer.com
Kay Dee Baird kbaird@kdlegal.com, rhobdy@kdlegal.com;crbpgpleadings@kdlegal.com
Michael I. Baird baird.michael@pbgc.gov, efile@pbgc.gov
Christopher E. Baker cbaker@hbkfirm.com, thignight@hbkfirm.com
James David Ballinger jim@kentuckytrial.com, jennifer@kentuckytrial.com
Joseph E. Bant jebant@lewisricekc.com
William J. Barrett william.barrett@bfkn.com, mark.mackowiak@bfkn.com
Ashley Flynn Bartram ashley.bartram@oag.texas.gov
Alex M Beeman alex@beemanlawoffice.com, abeeman@reminger.com
Thomas M Beeman tom@beemanlawoffice.com
Richard James Bernard rbernard@foley.com
Thomas Berndt tberndt@robinskaplan.com, jgerboth@robinskaplan.com
John J Berry john.berry@dinsmore.com, Christina.Lee@DINSMORE.COM
Lauren Beslow lauren.beslow@quarles.com
Brandon Craig Bickle bbickle@gablelaw.com
Jill B. Bienstock jbienstock@coleschotz.com
Michael Blumenthal michael.blumenthal@tklaw.com
David J. Bodle dbodle@hhclaw.com, layres@hhlaw-in.com
Robert A. Breidenbach rab@goldsteinpressman.com
Wendy D Brewer wbrewer@fmdlegal.com, cbellner@fmdlegal.com
Kayla D. Britton kayla.britton@faegrebd.com, noticeFRindy@faegrebd.com
Robert Bernard Bruner bob.bruner@nortonrosefulbright.com
Jason R Burke jburke@bbrlawpc.com, kellis@bbrlawpc.com
Erin Busch ebusch@nebraska.edu
John Cannizzaro john.cannizzaro@icemiller.com, Thyrza.Skofield@icemiller.com
Kevin M. Capuzzi kcapuzzi@beneschlaw.com,
lmolinaro@beneschlaw.com;docket@beneschlaw.com
James E. Carlberg jcarlberg@boselaw.com,
mwakefield@boselaw.com;rmurphy@boselaw.com
Steven Dean Carpenter scarpenter1@dor.in.gov
Deborah Caruso dcaruso@rubin-levin.net, dwright@rubin-levin.net;jkrichbaum@rubin-
levin.net;atty_dcaruso@bluestylus.com
Deborah J. Caruso trustecaruso@rubin-levin.net, DJC@trustesolutions.net
Joshua W. Casselman jcasselman@rubin-levin.net, angie@rubin-
levin.net;atty_jcasselman@bluestylus.com
Ben T. Caughey ben.caughey@merchocaughey.com
Sonia A. Chae chaes@sec.gov
John Andrew Chanin jchanin@lindquist.com, srummery@lindquist.com
Courtney Elaine Chilcote courtney@ckhattorneys.com,
ckh@ckhattorneys.com;tracy@ckhattorneys.com
Dale C Christensen christensen@sewkis.com

Eboney Delane Cobb ecobb@pbfc.com
Tiffany Cobb tscobb@vorys.com
Michael Edward Collins mcollins@manierherod.com
Michael Anthony Collyard mcollyard@robinskaplan.com, rhoule@robinskaplan.com
Eileen Connor econnor@law.harvard.edu
Lawrence D. Coppel lcoppel@gfrlaw.com
Heather M. Crockett Heather.Crockett@atg.in.gov, darlene.greenley@atg.in.gov
J Russell Cunningham rcunningham@dnlc.net, reaster@dnlc.net
Erica Dausch edausch@babstcalland.com
Melissa J. DeGross mjd@kgrlaw.com, cresler@kgrlaw.com
Dustin R. DeNeal dustin.deneal@faegrebd.com, noticeFRindy@faegrebd.com
Laura A DuVall Laura.Duvall@usdoj.gov, Catherine.henderson@usdoj.gov
Annette England annette.England@btlaw.com
Charles Anthony Ercole cercole@klehr.com, acollazo@klehr.com
Carolyn Meredith Fast carolyn.fast@ag.ny.gov
Elaine Victoria Fenna elaine.fenna@morganlewis.com
Andrew W Ferich awf@chimicles.com
Scott Patrick Fisher sfisher@drewrysimmons.com, lgarrison@DSVlaw.com
John David Folds dfolds@bakerdonelson.com, sparson@bakerdonelson.com
Jennifer N Fountain jfountain@iislaw.com, sfilippini@iislaw.com
Sarah Lynn Fowler sarah.fowler@mbcblaw.com, deidre.gastenveld@mbcblaw.com
Robert W. Fuller rfuller@rbh.com
Carlos Galliani carlos@thelidjifirm.com
Jonathan William Garlough jgarlough@foley.com, mstockl@foley.com;mdlee@foley.com
Lisa Giandomenico lgiandomenico@nmag.gov
Lea Pauley Goff lea.goff@skofirm.com, emily.keith@skofirm.com
John C Goodchild john.goodchild@morganlewis.com
Douglas Gooding dgooding@choate.com
John Andrew Goodridge jgoodridge@jaglo.com, angray@jaglo.com;dwhiggs@jaglo.com
Michael Wayne Grant michael.w.grant@doj.state.or.us
Richard Grayson Grant rgrant@rgglaw.com, grantecf@gmail.com
Alan Mark Grochal agrochal@tydingslaw.com
Elizabeth N. Hahn ehahn@rubin-levin.net, mralph@rubin-levin.net
Gregory Forrest Hahn ghahn@boselaw.com, jmcneeley@boselaw.com
Julian Ari Hammond Jhammond@hammondlawpc.com, ppecherskaya@hammondlawpc.com
Wallace M Handler whandler@swappc.com, kkloock@swappc.com
William J. Hanlon whanlon@seyfarth.com
Adam Craig Harris adam.harris@srz.com
Brian Hauck bhauck@jenner.com
Jeffrey M. Hawkinson jhawkinson@pcslegal.com, danderson@pcslegal.com
Michael J. Hebenstreit mjh@whzlaw.com,
arlene@whzlaw.com;ene@whzlaw.com;kdt@whzlaw.com
Amanda Marie Hendren amanda@indianalawgroup.com
Claude Michael Higgins Michael.Higgins@ag.ny.gov
Michael W. Hile mhile@jacobsonhile.com, assistant@jacobsonhile.com
Sean M Hirschten shirschten@psrb.com

Robert M. Hirsh robert.hirsh@arentfox.com
John C. Hoard johnh@rubin-levin.net, jkrichbaum@rubin-levin.net;atty_jch@trustesolutions.com;sturpin@rubin-levin.net
Curt Derek Hochbein chochbein@rubin-levin.net,
deidre@mbcblaw.com;ellen@mbcblaw.com
Jeffrey A Hokanson jeff.hokanson@icemiller.com, bgnotices@icemiller.com
Steven Howard Holinstat sholinstat@proskauer.com
Diana Hooley diana.hooley@state.ma.us
Thomas Ross Hooper hooper@sewkis.com
George Wade Hopper ghopper@cohenandmalad.com, klandeck@cohenandmalad.com
Andrew E. Houha bkecfnotices@johnsonblumberg.com
Andrew W. Hull awhull@hooverhullturner.com, fgipson@hooverhullturner.com
James C Jacobsen jjacobsen@nmag.gov, eheltman@nmag.gov
Christine K. Jacobson cjacobson@jacobsonhile.com, 5412@notices.nextchapterbk.com
Jay Jaffe jay.jaffe@faegrebd.com, noticeFRindy@faegrebd.com
David Januszewski djanuszewski@cahill.com
Benjamin F Johns bfj@chimicles.com, klw@chimicles.com
Russell Ray Johnson russj4478@aol.com
Kenneth C. Jones kcjones@lewisricekc.com
Anthony R. Jost tjost@rbelaw.com, baldous@rbelaw.com
David J. Jurkiewicz DJurkiewicz@boselaw.com,
mwakefield@boselaw.com;rmurphy@boselaw.com;dlingenfelter@boselaw.com
Aaron Kappler akappler@tokn.com
Timothy Q. Karcher tkarcher@proskauer.com
Steven Joseph Kasyjanski sjk-yount-atty@ameritech.net, skasyjan@gmail.com
Alan Katz akatz@lockelord.com
Richard B. Kaufman richardkfmn@gmail.com
Carly Kessler ckessler@robinskaplan.com
John M. Ketcham jketcham@psrb.com, scox@psrb.com
Taejin Kim tae.kim@srz.com
Edward M King tking@fbtlaw.com, lsugg@fbtlaw.com;tking@ecf.inforuptcy.com
Roy F. Kiplinger bankruptcy@kiplingerlaw.com, bankruptcy@kiplingerlaw.com
Jackson Taylor Kirklin taylor.kirklin@usdoj.gov, melanie.crouch@usdoj.gov
James A. Knauer jak@kgrlaw.com, tjf@kgrlaw.com
Kevin Dale Koons kkoons@kgrlaw.com, cjh@kgrlaw.com
Harris J. Koroglu hkoroglu@shutts.com, fsantelices@shutts.com
Lawrence Joel Kotler ljkotler@duanemorris.com
Robert R Kracht rrk@mccarthylebit.com
Andrew L. Kraemer akraemer@johnsonblumberg.com, akraemerlawoffice@att.net
David R. Krebs dkrebs@hbkfirm.com, dadams@hbkfirm.com
Jerrold Scott Kulback jkulback@archerlaw.com
Jay R LaBarge jlabarge@stroblpc.com
Darryl S Laddin bkrfilings@agg.com
Michael J. Langlois mlanglois@shouselanglois.com, rshouse@shouselanglois.com
Vilda Samuel Laurin slaurin@boselaw.com
Jordan A Lavinsky jlavinsky@hansonbridgett.com

Todd Evan Leatherman todd.leatherman@ky.gov
David S Lefere dlefer@mikameyers.com, jfortney@mikameyers.com
Anthony Darrell Lehman alehman@hpwlegal.com
Martha R. Lehman mlehman@salawus.com,
marthalehman87@gmail.com;ispells@salawus.com;lengle@salawus.com
Gary H Leibowitz gleibowitz@coleschotz.com,
pratkowiak@coleschotz.com;gleibowitz@coleschotz.com
Donald D Levenhagen dlevenhagen@landmanbeatty.com
Elizabeth Marie Little elizabeth.little@faegrebd.com
Edward J LoBello elobello@msek.com
Melinda Hoover MacAnally Melinda.MacAnally@atg.in.gov,
Carrie.Spann@atg.in.gov;Kenyatta.Peerman@atg.in.gov
Christopher John Madaio Cmadaio@oag.state.md.us
John A. Majors jam@morganandpottinger.com, majormajors44@yahoo.com
Steven A. Malcoun dsmith@mayallaw.com
Jonathan Marshall jmarshall@choate.com
Thomas Marvin Martin tmmartin@lewisricekc.com
Jeff J. Marwil jmarwil@proskauer.com,
npetrov@proskauer.com;pyoung@proskauer.com;sholinstat@proskauer.com
Richard J Mason rmason@mcguirewoods.com
C. Ed Massey mbracken@nkylawyers.com, cedmassey@nkylawyers.com
Ann Wilkinson Matthews amatthews@ncdoj.gov
Rachel Jaffe Mauceri rachel.mauceri@morganlewis.com
Michael Wesley McBride mmcbride@cohenandmalad.com, klandeck@cohenandmalad.com
Michael K. McCrory mmccrory@btlaw.com, bankruptcyindy@btlaw.com
Maureen Elin McOwen molly.mcowen@cfpb.gov
Harley K Means hkm@kgrlaw.com, kwhigham@kgrlaw.com;cjs@kgrlaw.com
Toby Merrill tomerrill@law.harvard.edu, ppsl@law.harvard.edu
Robert W. Miller rmiller@manierherod.com
Sherry Millman smillman@stroock.com
Jason Milstone jason.milstone@cmsenergy.com
Thomas E Mixdorf thomas.mixdorf@icemiller.com, brandy.matney@icemiller.com
Evgeny Grigori Mogilevsky eugene@egmlegal.com,
emily@egmlegal.com;mogilevsky41855@notify.bestcase.com
James P Moloy jmoloy@boselaw.com,
dlingenfelter@boselaw.com;mwakefield@boselaw.com
Ronald J. Moore Ronald.Moore@usdoj.gov
Hal F Morris hal.morris@oag.texas.gov
Michael David Morris michael.morris@ago.mo.gov
Kevin Alonzo Morrissey kmorrissey@lewis-kappes.com, soliver@lewis-
kappes.com;leckert@lewis-kappes.com;kwilliams@lewis-kappes.com
Whitney L Mosby wmosby@bgdlegal.com, fwolfe@bgdlegal.com
C Daniel Motsinger cmotsinger@kdlegal.com,
cmotsinger@kdlegal.com;crbpgpleadings@kdlegal.com;shammersley@kdlegal.com
Lee Duck Moylan lmoylan@klehr.com, acollazo@klehr.com
Joseph L. Mulvey joseph@mulveyllc.com, linda@mulveyllc.com

Abraham Murphy murphy@abrahammurphy.com
Justin Scott Murray jmurray@atg.state.il.us
Alissa M. Nann anann@foley.com, DHeffer@foley.com
Henry Seiji Newman hsnewman@dglaw.com
Kevin M. Newman knewman@menterlaw.com, kmnbk@barclaydamon.com, kevin-newman-8809@ecf.pacerpro.com
Cassandra A. Nielsen cnielsen@rubin-levin.net, atty_cnielsen@bluestylus.com, mralph@rubin-levin.net; lking@rubin-levin.net
Ryan Charles Nixon rcnixon@lamarcalawgroup.com
Isaac Nutovic inutovic@nutovic.com
Michael O'Donnell mike.odonnell@nortonrosefulbright.com
Gregory Ostendorf gostendorf@scopelitis.com, agreory@scopelitis.com
Weston Erick Overturf wes.overturf@mbcblaw.com, deidre.gastenveld@mbcblaw.com; ellen.sauter@mbcblaw.com
Pamela A. Paige ppaige@plunkettcooney.com, amiller@plunkettcooney.com
Kenneth Pasquale kpasquale@stroock.com
Eric Pendergraft ependergraft@slp.law, dwoodall@slp.law; bss@slp.law
Danielle Ann Pham danielle.pham@usdoj.gov
Anthony Pirraglia anthony.pirraglia@tklaw.com
Jack A Raisner jar@outtengolden.com, kdeleon@outtengolden.com; jquinonez@outtengolden.com
Jonathan Hjalmer Reischl jonathan.reischl@cfpb.gov
Michael Rella mrella@mmlawus.com
Caroline Ellona Richardson caroline@paganelligroup.com, anna@paganelligroup.com
James Leigh Richmond James.Richmond@fldoe.org
Mai Lan Gabrielle Rodgers Rodgers.MaiLan@pbgc.gov, efile@pbgc.gov
John M. Rogers johnr@rubin-levin.net, jkrichbaum@rubin-levin.net; atty_rogers@bluestylus.com; mralph@rubin-levin.net; lking@rubin-levin.net
Melissa M. Root mroot@jenner.com, wwilliams@jenner.com
David A. Rosenthal darlaw@nlci.com
James E Rossow jim@rubin-levin.net, ATTY_JER@trustesolutions.com; mralph@rubin-levin.net
Rene Sara Roupinian rsr@outtengolden.com, jxh@outtengolden.com; kdeleon@outtengolden.com; rfisher@outtengolden.com; gl@outtengolden.com; jquinonez@outtengolden.com; tloughran@outtengolden.com
Victoria Fay Roytenberg vroytenberg@law.harvard.edu, jjimenez@law.harvard.edu
Steven Eric Runyan ser@kgrlaw.com
Craig Damon Rust craig.rust@doj.ca.gov, Lindsay.Bensen@doj.ca.gov
Karl T Ryan info@ryanesq.com, kryan@ryanesq.com
Joseph Michael Sanders jsanders@atg.state.il.us
Thomas C Scherer tscherer@bgdlegal.com, fwolfe@bgdlegal.com
James R. Schrier jrs@rtslawfirm.com, lrobison@rtslawfirm.com; jlandes@rtslawfirm.com
Ronald James Schutz rschutz@robinskaplan.com
H. Jeffrey Schwartz jschwartz@robinskaplan.com
Courtney Michelle Scott cscott1@dor.in.gov
Joseph E Shickich jshickich@foxrothschild.com, vmagda@foxrothschild.com

Randall R Shouse rshouse@shouselanglois.com, mlanglois@shouselanglois.com
William E Smith wsmith@k-glaw.com, clipke@k-glaw.com
Lauren C. Sorrell lsorrell@kdlegal.com,
ayeskie@kdlegal.com;swaddell@kdlegal.com;cmotsinger@kdlegal.com;shammersley@kdlegal.
com
Berry Dan Spears berrydspears616@gmail.com
Catherine L. Steege csteege@jenner.com,
mhinds@jenner.com;thooker@jenner.com;aswingle@jenner.com
LaChelle D Stepp lstepp@steppjaffe.com, lastepp@yahoo.com
Jason V Stitt jstitt@kmlaw.com
Sharon Stolte sstolte@sandbergphoenix.com
Jesse Ellsworth Summers esummers@burr.com, sguest@burr.com
Matthew G. Summers summersm@ballardspahr.com, lanoc@ballardspahr.com
Jonathan David Sundheimer jsundheimer@btlaw.com
Nathan L Swehla nswehla@graydon.law
Nancy K. Swift nswift@buchalter.com, cbohnsack@buchalter.com
Andrew W.J. Tarr atarr@robinsonbradshaw.com, jrobey@robinsonbradshaw.com
Eric Jay Taube eric.taube@wallerlaw.com,
annmarie.jezisek@wallerlaw.com;sherri.savala@wallerlaw.com
Meredith R. Theisen mtheisen@rubin-levin.net, dwright@rubin-levin.net;mcruser@rubin-
levin.net
Meredith R. Theisen mtheisen@rubin-levin.net,
atty_mtheisen@bluestylus.com;mralf@rubin-levin.net;csprague@rubin-levin.net
Jessica L Titler jt@chimicles.com
David Tocco djtocco@vorys.com, mdwalkuski@vorys.com
Todd Christian Toral todd.toral@dlapiper.com, todd-toral-9280@ecf.pacerpro.com
Ronald M. Tucker rtucker@simon.com, cmartin@simon.com,bankruptcy@simon.com
Christopher Turner christopher.turner@lw.com, DClitserv@lw.com
U.S. Trustee ustpreion10.in.ecf@usdoj.gov
Lauren Valkenaar lauren.valkenaar@nortonrosefulbright.com
Sally E Veghte sveghte@klehr.com, acollazo@klehr.com
Rachel Claire Verbeke rverbeke@stroblpc.com
Aimee Vidaurri aimee.vidaurri@nortonrosefulbright.com
Amy L VonDielingen avondielingen@woodmclaw.com
Amy E Vulpio vulpioa@whiteandwilliams.com
Carolyn Graff Wade Carolyn.G.Wade@doj.state.or.us
Christopher D Wagner cwagner@hooverhullturner.com
Louis Hanner Watson louis@watsonnorris.com
Jeffrey R. Waxman jwaxman@morrisjames.com,
jdawson@morrisjames.com;wweller@morrisjames.com
Philip A. Whistler philip.whistler@icemiller.com, holly.minnis@icemiller.com
Bradley Winston bwinston@winstonlaw.com, lwheaton@winstonlaw.com
Brandon Michael Wise bwise@prwlegal.com
Cathleen Dianne Wyatt cwyatt@fbtlaw.com, tacton@fbtlaw.com
James T Young james@rubin-levin.net, lking@rubin-levin.net;atty_young@bluestylus.com
James E. Zoccola jzoccola@lewis-kappes.com

I further certify that on December 23, 2019, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion to Compromise and Settle a Certain Reimbursement Claim Against Southern New Hampshire University* was emailed to the following:

Arlington ISD/Richardson ISD: Eboney Cobb at ecobb@pbfc.com
CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com
Taxing Authority for Harris County, Texas: John P. Dillman at houston_bankruptcy@lgbs.com
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov
Florida Department of Education: Benman D. Szeto at benman.szeto@fldoe.org
Last Second Media, Inc.: T. Todd Eglund at teglund@beldenblaine.com
Hung Duong: Kevin Schwin at kevin@schwinlaw.com
Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

I further certify that on December 23, 2019, pursuant to Section IV.C.3(b)(ii) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion to Compromise and Settle a Certain Reimbursement Claim Against Southern New Hampshire University* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

R. Yvette Clark, General Counsel
Southern New Hampshire University
2500 North River Road
Manchester, NH 03106

/s/ Cassandra Nielsen
Cassandra Nielsen

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